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The opinion in support of the decision being entered today was not
written for publication and is not binding precedent of the Board.

Paper No. 11

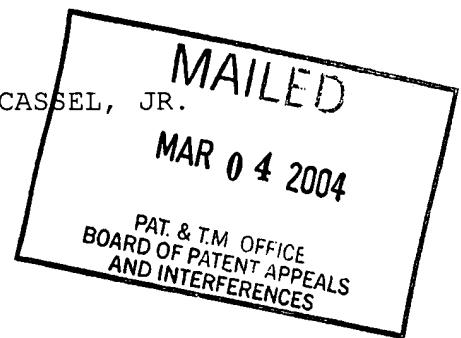
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CYNTHIA L. CASSEL and ROBERT H. CASSEL, JR.

Appeal No. 2002-1893
Application No. 09/767,413

ON BRIEF



Before HAIRSTON, KRASS, and BLANKENSHIP, Administrative Patent Judges.

HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 11.

The disclosed invention relates to a combination breathing monitor alarm and an audio baby alarm that comprises a transmitter forming a body of a linearly elongated, pliable chest strap of a soft and formable material that is wrapable about the chest of an infant, and a receiver for receiving signals transmitted by the transmitter.

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Claim 1 is the only independent claim on appeal, and it reads as follows:

1. A combination breathing monitor alarm and audio baby alarm comprising:

an attachable transmitter forming a main body of a linearly elongated, pliable chest strap of a soft and formable material that is easily wrapable about the chest of an infant; and

a receiver housing receiver control circuitry for receiving signals transmitted by said transmitter.

The references relied on by the examiner are:

Tao	4,862,144	Aug. 29, 1989
O'Dwyer	5,928,157	Jul. 27, 1999
Teodorescu et al. (Teodorescu)	6,011,477	Jan. 4, 2000

Claims 1, 2 and 4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over O'Dwyer.

Claims 3 and 6 through 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over O'Dwyer in view of Teodorescu.

Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over O'Dwyer in view of Tao.

Reference is made to the final rejection (paper number 6), the brief (paper number 8) and the answer (paper number 9) for the respective positions of the appellants and the examiner.

OPINION

We have carefully considered the entire record before us, and we will reverse the obviousness rejections of claims 1 through 11.

With respect to claim 1, appellants and the examiner all agree that the chest strap disclosed by O'Dwyer is not soft as claimed (brief, page 5; final rejection, pages 2 and 3). According to the examiner (final rejection, pages 2 and 3), "such material of the strap is merely a matter of design choice and substituting different material for another by one of ordinary skill in the art is anticipated and would not depart from the scope and spirit of the invention."

While the examiner's proposed modification to O'Dwyer may not depart from "the scope and spirit of the invention," it certainly would depart from the scope and spirit of the stiff strap teachings of O'Dwyer (Abstract; column 2, line 67 through column 3, line 4; column 5, lines 4 through 6; column 7, lines 41 through 43; column 8, lines 52 and 53; column 10, lines 15 through 63). We disagree with the examiner's contention (answer, pages 3 and 4) that O'Dwyer's stiff strap forms a "pliable chest strap of a soft and formable material that is easily wrapable about the chest of an infant" because O'Dwyer

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expressly teaches (column 4, lines 13 through 15) that the stiff strap should be "nonelastic." We agree with the appellants (brief, page 9) that only in hindsight does the disclosed and claimed combination of elements appear obvious to one of ordinary skill in the pertinent art. Thus, the obviousness rejection of claim 1 and dependent claims 2 and 4 is reversed because the skilled artisan armed with the stiff and nonelastic strap teachings of O'Dwyer certainly would not have resorted to "design choice" to choose a material that performs in an opposite manner to the material specifically chosen by O'Dwyer.

The obviousness rejections of claims 3 and 5 through 11 are reversed because the sensor teachings of Teodorescu and the visual warning light teachings of Tao fail to cure the noted shortcoming in the teachings of O'Dwyer.

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DECISION

The decision of the examiner rejecting claims 1 through 11 under 35 U.S.C. § 103(a) is reversed.

REVERSED

~~Kenneth W. Hairston~~
KENNETH W. HAIRSTON)
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Errol A. Krass)
ERROL A. KRASS)
Administrative Patent Judge)
Howard B. Blankenship)
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